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BRITISH COLUMBIA

OPINION

OF THE CONFLICT OF INTEREST COMMISSIONER PURSUANT TO SECTION 19(2) OF THE *MEMBERS' CONFLICT OF INTEREST ACT*

IN THE MATTER OF AN APPLICATION BY CHRIS DELANEY WITH RESPECT TO ALLEGED CONTRAVENTIONS OF PROVISIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT* BY THE HONOURABLE GORDON CAMPBELL, MLA, PREMIER OF BRITISH COLUMBIA

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City of Victoria
Province of British Columbia
June 18, 2004

Office of the Conflict of Interest Commissioner

The Honourable H. A. D. Oliver, Q.C.
Commissioner

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IN THE MATTER OF AN APPLICATION BY CHRIS DELANEY WITH RESPECT TO ALLEGED CONTRAVENTIONS OF PROVISIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT* BY THE HONOURABLE GORDON CAMPBELL, MLA, PREMIER OF BRITISH COLUMBIA

STYLE OF CAUSE

Mr. Chris Delaney, Leader of the BC Unity Party, has filed with the Office of the Conflict of Interest Commissioner a complaint, dated May 18, 2004 and received on June 3, 2004, against the Honourable Gordon Campbell, MLA, Premier of British Columbia "regarding his role and influence in dealing with his relative, Mr. Douglas Walls, concerning the allocation of contracts to Mr. Walls and/or his company Care Net, as well as the forgiveness of monies owing by Mr. Walls and/or his company to the provincial government." Mr. Delaney's letter continues as follows:

> I have reasonable and probable grounds to believe the Premier was in a conflict of interest, or an apparent conflict of interest, with respect to his dealings with Mr. Walls, based on the following information taken from the Price Waterhouse Coopers Investigation Report of Care Net Technology Society and the Provincial Government's Dealings with Douglas F. Walls:
>
> 1. Douglas F. Walls ("Doug Walls" or "Mr. Walls"), through companies by his immediate family members, was awarded contracts with the Ministry of Human Resources ("MHR"), the Community Living Transition Steering Committee ("CLTSC") and the Interim Authority for Community Living British Columbia ("Interim Authority") totalling approximately $350,000 in fees from 1999 to 2004. These contracts were not awarded or managed in accordance with government financial policy for the following reasons: competitive bids were not sought when the contracts were expected to be in excess of $25,000; no documentation was maintained on file to justify the direct awarding of the contracts; contracts were executed after the work actually started; and payments were made in excess of the contract amount.
>
> 2. Without any actual official position, Mr. Walls managed to insinuate himself into an influential position in the Ministry of Children and Family Development

("MCFD" or "Ministry") by utilizing his long term professional relationship with Chris Haynes, former Deputy Minister of MCFD. We concluded that Chris Haynes encouraged and accepted significant input from Mr. Walls into the affairs of MCFD even though Mr. Walls had no official position in the Ministry. We concluded that theirs was an unusual relationship that we would not have expected to find between a Deputy Minister and someone not officially connected to the Ministry. Mr. Walls was highly involved in the activities of the CareNet Technology Society ("CareNet" or the "Society") and instrumental in garnering significant MCFD support for connection charges incurred by CareNet. Mr. Walls attempted to influence the appointment of Chris Haynes as Deputy Minister.

3. A series of email correspondence between Mr. Walls and senior government officials implying a privileged relationship with the Premier that inferred a personal benefit to Mr. Walls, a family member of the Premier's. A sample of which is included below from the report:

Appendix D.5
E-mail: May 24th and 25th, 2001 (reference section 5.3.1)
----- Original Message -----
From: Doug Walls
To: BCL - Martyn Brown
Cc: BCL - Martyn Brown (home)
Sent: Thursday, May 24, 2001 8:48 AM
Subject: Interviews
Martyn,
Hearing about all the interviews and just want to make sure that Chris is not being overlooked. ***I talked with Gord about this and he said we didn't have to do anything - it was taken care of - but Chris is not being interviewed.*** If he doesn't wind up Deputy of MSDES it would be an absolute travesty. His appointment would be universally recognized throughout the service as the right one. Mike Corbeil has to be going anyway - he already has his boxes packed - yet he's being interviewed (apparently with 3 or 4 others) tomorrow. Is something off the rails here - if it is I have to do something. Please let me know.
Doug

[An investigation was conducted by Price Waterhouse Coopers – see below under "Investigative History".]

Mr. Delaney continues:

> We believe, based on the information contained in the Price Waterhouse Coopers audited investigation, that Premier Campbell was in a conflict of interest or an apparent conflict of interest with respect to his family member, Mr. Doug Walls, that lead to the forgiveness of receivables owing by Clear Net to the BC Government, as well as the awarding of contracts to Mr. Walls outside of the proper rules and procedures.

Mr. Delaney requests that the Conflict of Interest Commissioner investigate this matter and provide an opinion pursuant to s. 19(2) of the *Members' Conflict of Interest Act* as to whether The Honourable Gordon Campbell, with respect to his relationship with Mr. Doug Walls, was in a conflict of interest or an apparent conflict of interest in contravention of the provisions of s. 2 and 3 of the Act.

STATUTORY PROVISIONS

Members' Conflict of Interest Act:

> **Conflict of interest**
>
> **2** (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.
>
> (2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.
>
> **Conflict of interest prohibition**
>
> **3** A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

INVESTIGATIVE HISTORY

The dealings between Mr. Douglas Walls and the Provincial Government and its agencies have been the subject of a lengthy and thorough Inquiry by Price Waterhouse Coopers, an internationally renowned firm of chartered accountants. On January 30, 2004, PricewaterhouseCoopers LLP ("PwC"), pursuant to a competitive Request for Expressions of Interest process, was retained by Internal Audit and Advisory Services ("IAAS"), Office of the

Comptroller General, Ministry of Finance to conduct an investigation on behalf of IAAS. The nature of the investigation required PwC to access records (paper and electronic) and conduct interviews in multiple ministries, government agencies, and with external parties connected to the focus of the investigation.

The purpose of PwC's assignment was as follows:

- to investigate the financial and other affairs of CareNet Technology Society ("CareNet" or the "Society") as well as the appropriateness of the Province's dealings with Douglas F. Walls ("Mr. Walls" or "Doug Walls"), during the calendar years 1999 through 2004; and
- to determine whether Mr. Walls' relationships with certain key officials were business in nature and were carried out in the best interests of the Province.

Mr. Walls is a former Prince George businessman who has had some connection to the Liberal Party of BC and a long-term and significant involvement in the community living movement, both as a volunteer and as a paid consultant.

Terms of Reference

PwC's Terms of Reference were stated as follows:

> **Scope and Objectives**
>
> "The investigation will initially cover the period from 1999 to 2004. The period covered may be expanded if the independent auditor determines it is necessary.
>
> The investigation will include the following.
>
> ***Contracts and Payments***
>
> The independent auditor will review all payments to the individual and related companies and supporting contracts with the government, including but not limited to the Ministry of Children and Family Development, the Ministry of Human Resources, the Interim Authority for Community Living BC and related committees to determine:

- whether the contracts were awarded through a competitive process;
- if the contracts were not competed, the basis on which they were awarded;
- who approved the awarding of the contracts;
- whether payments against the contracts were supported with evidence that the contract deliverables were provided and on what basis that assessment was made;
- who approved the payments;
- whether the contracts were managed in accordance with government policy; and
- whether there is evidence of undue outside influence in the awarding and management of the contracts.

Appointments

The independent auditor will review the individual's role in any government-sponsored boards and committees, including but not limited to the Interim Authority for Community Living BC and the Transition Steering Committee, to determine:

- who appointed the individual;
- the basis for appointing the individual;
- remuneration the individual received and how it was derived;
- the individual's role on the committee, including delegated authority to make decisions and commit funds; and
- whether there is evidence of undue outside influence in the appointment or activities of the individual to the boards and committees.

Relationships

The independent auditor will review the relationships with certain government officials and the individual to determine:

- the nature of the relationship (business or personal);
- the individual's influence on key decisions and appointments.
- Government officials considered will include but not be limited to:
- the Minister of Children and Family Development, the Honourable Gordon Hogg;
- Minister of State for Early Childhood Development, the Honourable Linda Reid;
- the Deputy Minister of Children and Family Development, Mr. Chris Haynes;
- the Board of the Interim Authority for Community Living BC; and
- the Executive Committee for the Interim Authority for Community Living BC."

Notwithstanding the use of the term "independent auditor" in the Terms of Reference, PwC's role in this assignment has been that of an investigator. In the course of their investigation which extended over a period in excess of two and a half months, they conducted interviews with 48 witnesses and were able to perform identical forensic investigative procedures on seven computers and to secure copies of a large quantity of email messages. This resulted in a report of over 120 pages with a number of appendices and a voluminous collection of email communications, all of which are available on the following website: http://www.fin.gov.bc.ca/pwc_audit.pdf.

PwC's Findings

From the numerous findings contained in the PwC Report, I extract the following as relative to the complaint before me:

1. Doug Walls attempted to influence key provincial staff members with respect to MCFD accepting responsibility for the payment of the CareNet connection charges. However, we found no direct evidence that his attempts were what affected the decisions of MCFD staff in this regard.

2. Mr. Walls has confirmed he did his utmost to influence Chris Haynes.

3. We found that Mr. Walls often tried to impress by indicating that he had personal relationships with elected government officials and other decision makers.... Mr. Walls had a penchant for name-dropping.

4. We found that Mr. Walls' relationship with Premier Gordon Campbell was primarily political in nature because of Mr. Walls' involvement in politics at both the local and provincial levels. We also found that although Mr. Walls attempted to influence the appointment of Chris Haynes as Deputy Minister, he was rebuffed and admonished by the Premier for his inappropriate attempt to interfere in the appointment process.

5. Mr. Walls suggested that he may have exaggerated somewhat in his e-mails to Chris Haynes.

6. Although Mr. Walls attempted to lobby for the appointment of Chris Haynes as a Deputy Minister, he had no direct contact with Ken Dobell, Deputy Minister to the Premier and Cabinet Secretary, who was ultimately responsible for such appointments. We found no

evidence of undue pressure or influence with regard to Mr. Dobell's decision to recommend Mr. Haynes for the position of Acting Deputy Minister of MCFD.

COMMISSIONER'S ASSESSMENT OF EVIDENCE

In addition to careful consideration of the Report of the investigation by PwC and of the voluminous email messages filed together with that Report, I have interviewed the Complainant Mr. Delaney, the Comptroller General, and the Honourable Gordon Campbell. I have ascertained from Mr. Delaney that he bases his complaint entirely on the information contained in the PwC investigation report and that he has no additional information or submissions which he wishes me to consider.

In determining whether Mr. Campbell had a conflict of interest, I must ascertain whether he had a private interest which could be furthered by the manner in which he performed his official function or exercised his official power in determining whether – absent and actual conflict of interest – he had an apparent conflict of interest, I must determine whether a reasonably well informed person could have formed the perception that the exercise of his official powers must have been affected by a private interest.

In addition to considering whether there has been a breach of the conflict or apparent conflict of interest provisions of the statute as submitted by Mr. Delaney, I propose also to consider whether there has been a breach of s. 5 of the Act, which reads as follows:

> **Influence**
>
> **5** A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

DISCUSSION

1. Private interest

It has not been suggested that Mr. Campbell stood to gain financially, either directly or indirectly, from anything done in this matter but rather than he was attempting to benefit a close relative.

Even in the absence of an opportunity for personal economic advantage, the term "private interest" may, in certain circumstances, be wide enough to include acts based upon personal loyalty or affection, or benefits provided to others in the expectation of returned favours in the future. The extension of this definition of "private interest" beyond direct or indirect financial advantage is one which calls for the exercise of caution and careful consideration of the particular circumstances of each case.

2. Relationship Between Mr. Campbell and Mr. Walls

(i) Familial

Mr. Walls is married to a lady who is one of some sixteen cousins of the lady who is married to Mr. Campbell. This may be described, at best, as a remote connection by marriage. Mr. Campbell was unaware of the existence of this connection until it was casually mentioned by Mr. Walls at a political meeting in Prince George.

(ii) Political

From 1993 to 1996, Mr. Walls was President of a Liberal Constituency Association (Omineca). Mr. Campbell was first elected to the Legislature in February 1994. The Liberal Party was then in Opposition and did not form the government until the 2001 General Election. During the intervening years, Mr. Walls and Mr. Campbell (then Leader of the Opposition) met from time-to-time and discussed the building of the Liberal Party in the Prince George area.

(iii) The Walls/CareNet Affair

The findings and recommendations in the PwC Inquiry are set out in detail in the Inquiry Report. They are partially reflected in Mr. Delaney's complaint and have resulted in a number of dismissals and resignations. The Report also contains the following:

- "We found no evidence of undue outside influence in the contracting of, or activities of Mr. Walls with respect to CLTSC or the Interim Authority."
- "We found that, notwithstanding the relationship between Mr. Walls and Premier Campbell, … the Premier was not influenced by Mr. Walls and in fact admonished him for his attempt to interfere in the appointment process."
- "Doug Walls attempted to influence key provincial staff members with respect to MCFD accepting responsibility for the payment of the CareNet connection charges. However, we found no direct evidence that his attempts were what affected the decisions of MCFD staff in this regard."
- " We found no evidence of undue outside influence in Mr. Walls' appointments as a contractor to CLTSC and the Interim Authority."
- "Mr. Walls attempted to influence the appointment of Chris Haynes as Deputy Minister; he was admonished by the Premier for his interference."

3. Email Communications

Mr. Delaney in his complaint refers to "a series of email correspondence between Mr. Walls and senior government officials implying a privileged relationship with the Premier that inferred a personal benefit to Mr. Walls, a family member of the Premier's. A sample of which is included below from the report." Then Mr. Delaney quotes from an email message (Doug Walls to Martyn Brown) of May 24, 2001 containing the words "Hearing about all the interviews and just want to make sure that Chris is not being overlooked. I talked with Gord about this and he said we didn't have to do anything - it was taken care of - but Chris is not being interviewed." From the wording of the complaint one might draw the inference that there was a large number of email communications between Mr. Walls and others referring to a relationship with the Premier. In fact, out of the dozens of email communications examined during the PwC Investigation, only one other (June 2, 2001 from Walls to Haynes) appears to have any reference to the Premier. The relevant extract reads: "Stay calm … deep breaths … I chased Gord and

Martyn down last night. Gord is likely a bit frantic as Lara was setting up the calls for Cabinet posts for today…" There are other email communications exhibited to PwC's Report with reference to "Gord" but I am satisfied, on an examination of all the material, that those references are to one of two different individuals having the same Christian name as the Premier. It is those two messages which form the basis for Mr. Delaney's complaint.

What was Premier Campbell's response to Mr. Wall's approach? Mr. Campbell recollects an approach, either by email or telephone, from Mr. Walls in 2001 in which Mr. Walls was trying to influence the deputy minister selection process. Premier Campbell regarded this as totally inappropriate and offensive and told Mr. Walls that in no uncertain terms. Mr. Walls, when questioned about this in the course of the PwC Investigation, described the Premier's response as "brutal", "admonishing" and " personally very embarrassing."

OPINION

I begin by pointing out that my concern under the *Members' Conflict of Interest Act* is with the conduct of the Honourable Gordon Campbell, MLA and with allegations outlined in Mr. Delaney's complaint of alleged contraventions of the conflict of interest and alleged conflict of interest provisions of the statute. I am not concerned with the conduct of Mr. Walls except insofar as it forms the basis of the complaint before me. I find that the somewhat remote connection by marriage existing between Mr. Campbell and Mr. Walls does not constitute a sufficient basis for finding the existence of a "private interest" on the part of Mr. Campbell, nor is there before me any evidence or argument for establishing any other basis for such a finding.

I find that Mr. Walls in the mistaken belief that he might be able to persuade the Premier to exercise influence on behalf of Mr. Walls and in furtherance of Mr. Walls' interest made an improper and presumptuous approach to the Premier to seek his support for the appointment of Mr. Walls' favoured candidate to a position as Deputy Minister and was forthwith turned away with a sharp reprimand for endeavoring to interfere with the selection process. I find further that the Premier had no personal involvement in the process which lead to the appointment of Mr.

Haynes as Deputy Minister. I find that the Honourable Gordon Campbell had no involvement in the "forgiveness of receivables owing by Clear Net to the BC Government" or in the "awarding of contracts to Mr. Walls outside of the proper rules and procedures." I find that Mr. Campbell was not in a conflict of interest position and that a reasonably well informed person could not have a reasonable perception that his ability to perform an official power or perform an official duty or function must have been affected by his private interest.

I have also considered the question (not raised by Mr. Delaney) of whether Mr. Campbell had used his office to seek to influence a decision to be made by another person to further Mr. Campbell's private interest (in contravention of s. 5 of the statute) but find that there is no evidence to support any such conclusion.

Dated this 18th day of June, 2004
In the City of Victoria, Province of British Columbia

H. A. D. Oliver, Q.C.
Conflict of Interest Commissioner